

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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MAR 14 2005

In the Matter of )

Petition of WorldCom, Inc. Pursuant to Section  
252(e)(5) of the Communications Act for  
Preemption of the Jurisdiction of the Virginia  
State Corporation Commission Regarding  
Interconnection Disputes with Verizon Virginia  
Inc., and for Expedited Arbitration )

CC Docket No. 00-218

Petition of AT&T Communications of Virginia  
Inc., Pursuant to Section 252(e)(5) of the  
Communications Act for Preemption of the  
Jurisdiction of the Virginia Corporation  
Commission Regarding Interconnection Disputes  
With Verizon Virginia Inc. )

CC Docket No. 00-251

### MEMORANDUM OPINION AND ORDER

Adopted: March 11, 2005

Released: March 11, 2005

By the Chief, Wireline Competition Bureau:

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## I. INTRODUCTION

1. On August 28, 2003, the Wireline Competition Bureau (Bureau), acting through authority expressly delegated by the Commission and standing in the stead of the Virginia State Corporation Commission (Virginia Commission),<sup>1</sup> issued a decision resolving all pricing issues arising under the petitions for arbitration of interconnection agreements between Verizon Virginia, Inc. (Verizon) and AT&T Communications of Virginia, Inc. (AT&T) and Verizon and WorldCom, Inc. (WorldCom)<sup>2</sup> and requiring the parties to submit compliance filings.<sup>3</sup> On January 29, 2004 the Bureau issued a decision resolving all outstanding issues pertaining to the parties' compliance filings and establishing the rates that Verizon may charge AT&T/WorldCom for unbundled network elements (UNEs), interconnection, and resale.<sup>4</sup> In the *Compliance Order*, the Bureau instructed the parties to incorporate the rates set forth therein and any other mutually agreed upon rates – and only those rates – into an amendment to their respective interconnection agreements.<sup>5</sup> We required the parties to submit these amendments for approval<sup>6</sup> pursuant to section 252(e)(1) of the Telecommunications Act of 1996 (1996 Act).<sup>7</sup>

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<sup>1</sup> 47 U.S.C. § 155(c)(1); *Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act, as amended*, Order, 16 FCC Rcd 6231, 6233, paras. 8-10 (2001) (*Arbitration Procedures Order*) (delegating authority to the Bureau to conduct and decide these arbitration proceedings).

<sup>2</sup> Because AT&T and WorldCom jointly filed their initial cost studies, most of their testimony and post-hearing briefs, and their compliance filing and cost studies, we generally refer to them collectively as AT&T/WorldCom. In instances in which either AT&T or WorldCom individually supports a position, we refer to that party individually. Also, although WorldCom has emerged from bankruptcy and is now operating as MCI, to maintain consistency with all of the prior orders in this proceeding, except where we quote a party's submission, we generally continue to refer to the company as WorldCom.

<sup>3</sup> See *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-251, Memorandum Opinion and Order, 18 FCC Rcd 17722 (WCB 2003) (*Cost Order*). In two previous orders, the Bureau addressed the terms and conditions of interconnection agreements between the petitioners and Verizon. See *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039 (WCB 2002) (*Non-Cost Arbitration Order*); *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-251, Memorandum Opinion and Order, 17 FCC Rcd 19654 (WCB 2002) (*Non-Cost Arbitration Approval Order*).

<sup>4</sup> *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-251, Memorandum Opinion and Order, 19 FCC Rcd 1259 (WCB Jan. 29, 2004) (*Compliance Order*) as corrected by Erratum, 19 FCC Rcd 1074 (WCB PPD Feb. 5, 2004).

<sup>5</sup> *Id.* at 1274, para. 41.

<sup>6</sup> *Id.* at 1275, paras. 45-46 (requiring pricing amendments to be filed within ten days of that order); see also *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-251, Order, 19 FCC Rcd 2220, 2221, at para. 3 (WCB/PPD rel. (continued....))

2. In this Memorandum Opinion and Order (Order), the Bureau, again acting pursuant to authority delegated by the Commission,<sup>8</sup> resolves yet more pricing issues raised by the parties in the above-captioned consolidated arbitration proceeding. Despite our prior orders that (1) resolved all of the pricing issues previously raised by the parties,<sup>9</sup> (2) specifically set the rates that Verizon may charge AT&T/WorldCom for UNEs, interconnection, and resale,<sup>10</sup> (3) provided clear direction to the parties about how to implement these rates,<sup>11</sup> and (4) granted two extensions of time for the parties to submit the implementing amendments to their respective interconnection agreements,<sup>12</sup> the parties have requested that we resolve an additional fourteen pricing issues. On March 24, 2004, the parties jointly filed their respective proposed pricing amendments. The pricing schedule exhibits to these amendments include competing proposals with respect to each disputed issue. The parties also filed a joint decision point list (JDPL) that identifies each of these new issues and summarizes the parties' positions.<sup>13</sup>

3. In this Order, we resolve these new issues in a manner consistent with our prior orders in these proceedings.<sup>14</sup> First, we continue to apply the "baseball" arbitration rules.<sup>15</sup> Second, we address

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Feb. 9, 2004) (*First Extension Order*) (granting thirty day extension of time to file pricing amendments); *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-251, Order, 19 FCC Rcd 4567, 4568, at para. 3 (WCB/PPD rel. March 10, 2004) (*Second Extension Order*) (granting an additional fourteen day extension of time to file pricing amendments).

<sup>7</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). We refer to the Communications Act of 1934, as amended by the 1996 Act and other statutes, as the Communications Act, or the Act. See 47 U.S.C. §§ 151 *et seq.*

<sup>8</sup> *Arbitration Procedures Order*, 16 FCC Rcd at 6233, paras. 8-10.

<sup>9</sup> See *Cost Order*, 18 FCC Rcd 17722.

<sup>10</sup> See *Compliance Order*, 19 FCC Rcd 1259.

<sup>11</sup> See *Cost Order*, 18 FCC Rcd at 17991-93, paras. 694-702; *Compliance Order*, 19 FCC Rcd at 1274-75, paras. 41, 45-46.

<sup>12</sup> See *First Extension Order*, 19 FCC Rcd at 2221, para. 3; *Second Extension Order*, 19 FCC Rcd at 4568, para. 3.

<sup>13</sup> See Letter from Samir Jain, Wilmer Cutler Pickering LLP, to Marlene H. Dortch, Sec'y, FCC, CC Docket Nos. 00-218, 00-251 (filed March 24, 2004) (March Amendment Filing). This filing included (1) the interconnection agreement amendments, including pricing schedules, that reflected only the ordered or agreed-upon rates; (2) the pricing schedules containing the ordered, agreed-upon, and disputed rates; and (3) a JDPL that sets forth the disputed issues and a brief summary of each party's position on these issues. See *id.* (All citations in this Order to the JDPL refer to the March Amendment Filing, Tab 5). On May 7, 2004, the parties jointly filed revised amendments and pricing schedules, which include partially negotiated non-recurring rates for certain UNEs the costs of which include design time components. See Letter from Samir Jain, Wilmer Cutler Pickering LLP, to Marlene H. Dortch, Sec'y, FCC, CC Docket Nos. 00-218, 00-251 (filed May 7, 2004) (Revised Amendment Filing); see also *Cost Order*, 18 FCC Rcd at 17954-55, paras. 593. While we applaud the parties for reaching a partially negotiated solution for these rates, we note that the revised filing does not resolve any of the fourteen issues presented in the March 24, 2004 filing.

<sup>14</sup> See *Cost Order*, 18 FCC Rcd at 17727-28, 17736-37, paras. 3-5, 24-25; *Compliance Order*, 19 FCC Rcd at 1261-62, para. 3.

only those issues arising directly from our decisions in the *Cost Order* and the *Compliance Order*.<sup>16</sup> To determine whether an issue has been properly raised, we rely on the criteria set forth in the *Compliance Order*:

The parties shall include in their [interconnection agreement] amendments only the rates identified in Appendix A [of the *Virginia Arbitration Compliance Order*] and any other mutually agreed upon rates. *No party may submit in these amendments any proposed rate that is not either contained in Appendix A or otherwise mutually agreed to by the parties to the underlying interconnection agreement.*<sup>17</sup>

4. To the extent that the parties raise new issues, we do not address them here. Rather, as to those issues, we find that neither party's proposed rates or contract language should be included in the interconnection agreement amendments. To avoid any possible future confusion and to enable the parties to effectuate our decision here, as well as our prior pricing decisions in this proceeding, we attach the pricing amendments they submitted, modified to incorporate the determinations in this Order.<sup>18</sup> We order the parties to amend their respective interconnection agreements by adding Appendix A or B hereto to their respective interconnection agreements. We further order the parties to execute such amendments and to submit them to the Commission within five (5) business days of the release date of this Order.

5. In this Order, we also resolve the issue of whether negotiated amendments to the interconnection agreements arbitrated by the Commission should be filed for approval here or with the Virginia Commission. On March 26, 2004, WorldCom filed with the Commission a negotiated amendment to the Verizon-WorldCom interconnection agreement.<sup>19</sup> Verizon filed a motion to strike on April 8, 2004, claiming that the amendment should be filed with the Virginia Commission and not with the Federal Communications Commission.<sup>20</sup> For the reasons provided below, we grant Verizon's motion to strike.<sup>21</sup>

(Continued from previous page) —————

<sup>15</sup> See 47 C.F.R. §§ 51.807(b), (d); see also *Cost Order*, 18 FCC Rcd at 17736, para. 24.

<sup>16</sup> See *Compliance Order*, 19 FCC Rcd at 1261, para. 3 ("We emphasize, however, that we restrict ourselves to addressing the issues that the parties have directly placed at issue through their compliance filings.").

<sup>17</sup> *Virginia Arbitration Compliance Order*, 19 FCC Rcd 1274, para. 41 (emphasis added).

<sup>18</sup> See *infra* Apps. A (Verizon-AT&T pricing schedule), B (Verizon-WorldCom pricing schedule), each of which we incorporate herein by this reference. We use the pricing schedules submitted by the parties on May 7, 2004 as the starting points for the pricing schedules we attach to this order.

<sup>19</sup> See Letter from Kecia Boney Lewis, Senior Counsel, Law and Public Policy, Federal Advocacy, MCI, to Marlene H. Dortch, Sec'y, FCC, CC Docket No. 00-218 (filed March 26, 2004) (WorldCom Negotiated Amendment Filing).

<sup>20</sup> See Letter from Samir Jain, Wilmer Cutler Pickering LLP, to Marlene H. Dortch, Sec'y, FCC, CC Docket Nos. 00-218, 00-251 (filed April 8, 2004) (Verizon Motion to Strike).

<sup>21</sup> See *infra* section II.B.

## II. OUTSTANDING ISSUES

6. We turn first to the parties' failure to implement the *Compliance Order* and resolve the parties' pricing schedule disputes.<sup>22</sup> We then address whether to approve the separate Verizon-WorldCom negotiated amendment.<sup>23</sup>

### A. Pricing Schedule Issues

7. The parties have raised fourteen additional issues for us to resolve, presenting these issues in a jointly filed JDPL.<sup>24</sup> No explanation of these issues or of the positions of the parties on these issues was provided beyond the brief summaries contained in the JDPL.<sup>25</sup> The issues raised by the parties fall into three categories, and we address them accordingly: (1) issues about how to implement our prior orders;<sup>26</sup> (2) new issues;<sup>27</sup> and (3) attempts to re-litigate issues resolved in prior orders.<sup>28</sup>

#### 1. Issues Involving Implementation of Prior Orders

##### a. Non-Recurring Charges (NRCs) for Certain Non-Basic UNE-Platforms (Issue 4).

8. Verizon proposes that the UNE-P NRCs for the DS1/DID/DOD/PBX Platform, ISDN PRI Platform, DS1/DID/DOD/PBX FX Platform, and ISDN PRI FX Platform New Initial should be set at the rates for the DS1 Loop to Customer Premise NRCs calculated by the AT&T/WorldCom NRC model.<sup>29</sup> Verizon further proposes that the POTS/ISDN BRI FX Platform NRCs should be set at the same level as the POTS/ISDN/BRI Loop NRCs.<sup>30</sup> Verizon claims that the DS1 Loop to Customer Premise and the POTS/ISDN/BRI Loop NRCs should be used instead of the POTS/ISDN BRI Migration for UNE-P because provisioning of the loop types at issue requires greater work than does provisioning of a basic, analog loop.<sup>31</sup>

9. AT&T/WorldCom propose that the basic POTS/ISDN BRI UNE-P NRCs should apply to these UNE-P types.<sup>32</sup> They claim that the 100 percent dedicated inside plant / dedicated outside plant

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<sup>22</sup> See *infra* section II.A.

<sup>23</sup> See *infra* section II.B.

<sup>24</sup> See JDPL at 1-10.

<sup>25</sup> We attach the JDPL as Appendix C to this Order. See *infra* App. C (incorporated herein by this reference).

<sup>26</sup> See *infra* section II.A.1.

<sup>27</sup> See *infra* section II.A.2.

<sup>28</sup> See *infra* section II.A.3.

<sup>29</sup> JDPL at 3 (Issue 4), column 2.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> JDPL at 3 (Issue 4), column 3.

(DIP/DOP) assumption adopted in the *Cost Order* applies to all forms of UNE-P and, therefore, that the basic POTS/ISDN BRI migration NRC should apply to all types of UNE-P.<sup>33</sup>

10. We agree with Verizon, in part, and adopt its proposal for the DS1/DID/DOD/PBX Platform, ISDN PRI Platform, DS1/DID/DOD/PBX FX Platform, and ISDN PRI FX Platform New Initial NRCs. We adopt AT&T/WorldCom's proposal for the POTS/ISDN BRI FX Platform NRC. Although we adopted AT&T/WorldCom's 100 percent DIP/DOP assumption in calculating the NRC for a basic hot cut (*i.e.*, POTS/ISDN BRI (UNE-P)) in the *Cost Order*,<sup>34</sup> we did not discuss the application of the DIP/DOP assumption to the NRCs for the types of UNE-P at issue here. Accordingly, we find it appropriate to clarify which NRCs apply to these UNE-P types.

11. As a threshold matter, we note that both parties propose setting NRCs for these UNE-P types based on NRC rates determined using the AT&T/WorldCom NRC model. We agree with Verizon that the DS1 Loop to Customer Premise UNE appears to be a closer analog than is the POTS/ISDN BRI UNE-P type for the DS1/DID/DOD/PBX Platform, ISDN PRI Platform, DS1/DID/DOD/PBX FX Platform, and ISDN PRI FX Platform New Initial UNE-P types. Each of these platforms is based on either DS1 or ISDN PRI and, thus, is similar to the DS1 Loop to Customer Premise UNE. We therefore find it appropriate to apply the AT&T/WorldCom NRC model rates for the DS1 Loop to Customer Premise for these UNE-P types.

12. We agree with AT&T/WorldCom that the POTS/ISDN BRI UNE-P type is a closer analog than is the POTS/ISDN/BRI Loop for the POTS/ISDN BRI FX UNE-P type. Both sides claim that certain POTS/ISDN BRI NRCs should be used. Because AT&T/WorldCom propose using the UNE-P NRCs, whereas Verizon proposes using UNE-loop NRCs, and because the rates at issue are for a UNE-P type, not a UNE-loop type, we find that, between the two proposals, the AT&T/WorldCom proposal is superior.<sup>35</sup>

**b. NRC for 2-Wire Customer Specified Signaling (CSS) Loops (Issue 5).**

13. Verizon proposes that the NRCs for the 2-Wire CSS Loop should be set at the 4-Wire Basic Loop rates,<sup>36</sup> and AT&T/WorldCom propose that the NRCs should be set at the 2-Wire Basic Loop rates.<sup>37</sup> Verizon claims that the 2-Wire CSS Loop "requires significantly more engineering time to provision than an ordinary 2-wire loop," and that, therefore, the NRCs for the 4-wire loop, which "involve additional work as compared to a basic 2-wire loop" serve as a better approximation of the 2-

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<sup>33</sup> *Id.*

<sup>34</sup> See *Cost Order*, 18 FCC Rcd at 17952, para. 587.

<sup>35</sup> We also note that the recurring rates for ISDN BRI are higher than the recurring rates for POTS. See *Cost Order*, 18 FCC Rcd at 17857-61, 18002-03, paras. 349-56, App. E.

<sup>36</sup> JDPL at 3 (Issue 5), column 2.

<sup>37</sup> JDPL at 3 (Issue 5), column 3.

Wire CSS Loop NRCs.<sup>38</sup> AT&T/WorldCom claim that the 2-wire loops included in its NRC model include 2-Wire CSS Loops and that, therefore, the NRCs for these loop types should be the same.<sup>39</sup>

14. We adopt the AT&T/WorldCom proposal and set the 2-Wire CSS NRCs at the same levels as the NRCs for the basic 2-wire loop. We note, moreover, that the recurring rates for the 2-Wire CSS Loop are one-third higher (on a statewide average basis) than the 2-Wire Basic Unbundled Loop rates because they include additional costs for customer specified signaling.<sup>40</sup> Other than Verizon's new and unsupported allegation that customer specified signaling requires an unspecified amount of additional engineering work as compared to basic loop types, the record contains no evidence supporting the use of 4-wire loop costs for determining the 2-Wire CSS Loop NRCs. Nor does Verizon attempt to explain why any alleged additional engineering costs are not already recovered through recurring rates. AT&T/WorldCom, on the other hand, propose using the more analogous 2-wire loop element, rather than a 4-wire loop element, as the basis for setting the 2-Wire CSS Loop NRC. We therefore adopt AT&T/WorldCom's proposed NRCs for the 2-Wire CSS Loop.

**c. Interoffice Transport (Issue 7).**

15. Verizon claims that the rates for the three variations of dedicated interoffice transport include multiplexing and/or digital cross-connect (DCS) in the middle of the transport facility only and that additional rates for multiplexing and DCS (when ordered in conjunction with dedicated interoffice transport) should be included in the pricing schedules.<sup>41</sup> Verizon argues that its position is consistent with our prior orders in this proceeding. Verizon thus contends that it now should be permitted to add new rate elements for multiplexing and DCS.<sup>42</sup>

16. AT&T/WorldCom claim that neither the parties' interconnection agreements nor the Bureau's prior orders in this proceeding limit interoffice transport elements as Verizon contends.<sup>43</sup> They further claim that the Bureau previously accepted Verizon's assertion that multiplexing and DCS costs should be included in the interoffice transport rates because they are integral parts of the transport facility.<sup>44</sup>

17. We strike the phrase "in the middle" proposed by Verizon from the dedicated interoffice transport options in the pricing schedules, as well as the separate Verizon proposed rates for multiplexing and DCS. In the *Cost Order*, we found "that dedicated transport rates should be established separately for dedicated transport that includes both DCS and multiplexing [and] that includes each individually,"

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<sup>38</sup> JDPL at 3 (Issue 5), column 2.

<sup>39</sup> JDPL at 3 (Issue 5), column 3.

<sup>40</sup> See *Cost Order*, 18 FCC Rcd at 18002-03, App. E.

<sup>41</sup> JDPL at 5-6 (Issue 7), column 2; see also *Cost Order*, 18 FCC Rcd at 17922-23, paras. 509-511; *Compliance Order*, 19 FCC Rcd at 1268-70, paras. 27, 31.

<sup>42</sup> JDPL at 5-6 (Issue 7), column 2.

<sup>43</sup> JDPL at 5 (Issue 7), column 3.

<sup>44</sup> *Id.*

(DIP/DOP) assumption adopted in the *Cost Order* applies to all forms of UNE-P and, therefore, that the basic POTS/ISDN BRI migration NRC should apply to all types of UNE-P.<sup>33</sup>

10. We agree with Verizon, in part, and adopt its proposal for the DS1/DID/DOD/PBX Platform, ISDN PRI Platform, DS1/DID/DOD/PBX FX Platform, and ISDN PRI FX Platform New Initial NRCs. We adopt AT&T/WorldCom's proposal for the POTS/ISDN BRI FX Platform NRC. Although we adopted AT&T/WorldCom's 100 percent DIP/DOP assumption in calculating the NRC for a basic hot cut (*i.e.*, POTS/ISDN BRI (UNE-P)) in the *Cost Order*,<sup>34</sup> we did not discuss the application of the DIP/DOP assumption to the NRCs for the types of UNE-P at issue here. Accordingly, we find it appropriate to clarify which NRCs apply to these UNE-P types.

11. As a threshold matter, we note that both parties propose setting NRCs for these UNE-P types based on NRC rates determined using the AT&T/WorldCom NRC model. We agree with Verizon that the DS1 Loop to Customer Premise UNE appears to be a closer analog than is the POTS/ISDN BRI UNE-P type for the DS1/DID/DOD/PBX Platform, ISDN PRI Platform, DS1/DID/DOD/PBX FX Platform, and ISDN PRI FX Platform New Initial UNE-P types. Each of these platforms is based on either DS1 or ISDN PRI and, thus, is similar to the DS1 Loop to Customer Premise UNE. We therefore find it appropriate to apply the AT&T/WorldCom NRC model rates for the DS1 Loop to Customer Premise for these UNE-P types.

12. We agree with AT&T/WorldCom that the POTS/ISDN BRI UNE-P type is a closer analog than is the POTS/ISDN/BRI Loop for the POTS/ISDN BRI FX UNE-P type. Both sides claim that certain POTS/ISDN BRI NRCs should be used. Because AT&T/WorldCom propose using the UNE-P NRCs, whereas Verizon proposes using UNE-loop NRCs, and because the rates at issue are for a UNE-P type, not a UNE-loop type, we find that, between the two proposals, the AT&T/WorldCom proposal is superior.<sup>35</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> See *Cost Order*, 18 FCC Rcd at 17952, para. 587.

<sup>35</sup> We also note that the recurring rates for ISDN BRI are higher than the recurring rates for POTS. See *Cost Order*, 18 FCC Rcd at 17857-61, 18002-03, paras. 349-56, App. E.

<sup>36</sup> JDPL at 3 (Issue 5), column 2.

<sup>37</sup> JDPL at 3 (Issue 5), column 3.



agree with Verizon that the addition of a footnote expressly cross-referencing specific provisions of the Verizon-WorldCom interconnection is unnecessary and should be stricken. We also find that the proposed footnote violates the requirement that the parties include in their rate amendments only the rates set forth in the *Compliance Order* or agreed to by the parties.<sup>54</sup>

**e. Access Charges for Switching (Issue 14).**

21. Verizon proposes that the interconnection agreement pricing amendments should contain a footnote stating that it may levy access charges upon AT&T/WorldCom for unbundled switching, in addition to the UNE rates, as permitted by Applicable Law.<sup>55</sup> Verizon claims that this language is necessary to permit it to charge AT&T/WorldCom when Verizon terminates an intraLATA toll call that originates with an AT&T/WorldCom UNE-Platform (UNE-P) customer, and that this result is consistent with the Bureau's *Non-Cost Order*.<sup>56</sup>

22. AT&T/WorldCom disagree, arguing that the disputed language should be stricken from the footnote in the pricing amendment because Verizon may not assess access charges for the unbundled switching element in any circumstances.<sup>57</sup> They also state that the *Local Competition First Report and Order* permits them (as the UNE purchaser), not Verizon, to assess access charges on interexchange carriers.<sup>58</sup>

23. We agree with AT&T/WorldCom and order the disputed language stricken from the interconnection agreement amendments. The rates at issue are for the end office switching UNE. As we explained in both the *Cost Order* and the *Compliance Order*, we established a flat, per line port unbundled rate by dividing total switching costs by total line ports using Verizon's switching cost studies.<sup>59</sup> Thus, the unbundled switching rate fully compensates Verizon for all of its switching costs. AT&T/WorldCom, moreover, are correct that the *Local Competition First Report and Order* permits AT&T/WorldCom to assess charges on the interexchange carrier in situations where calls originate from or terminate to an AT&T/WorldCom UNE-P customer.<sup>60</sup> We also find Verizon's reliance on the *Non-Cost Order* is misplaced. There, we addressed the issue of whether certain calls between a facilities-based competitive carrier's customer and a Verizon customer should be subject to reciprocal

<sup>54</sup> See *Compliance Order*, 19 FCC Rcd at 1274, para. 41; see *infra* section II.A.2.

<sup>55</sup> JDPL at 9-10 (Issue 14), column 2.

<sup>56</sup> JDPL at 9 (Issue 14), column 2.

<sup>57</sup> JDPL at 9 (Issue 14), column 3.

<sup>58</sup> *Id.*

<sup>59</sup> *Cost Order*, 18 FCC Rcd at 17912, para. 488; *Compliance Order*, 19 FCC Rcd at 1269, para. 30.

<sup>60</sup> See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 95-185, 96-98, First Report and Order, 11 FCC Rcd 15679-82, 15864-65, paras. 356-63, 721-22 (1996) (*Local Competition First Report and Order*). Verizon conceded that it is not entitled to assess access charges on UNE-P traffic when it sought forbearance from that requirement. See *Petition for Forbearance From the Current Pricing Rules for the Unbundled Network Element Platform*, WC Docket No. 03-157, *Petition for Expedited Forbearance of the Verizon Telephone Companies* (filed July 1, 2003). Verizon subsequently withdrew its forbearance petition. See *Verizon Telephone Companies' Petition for Forbearance From the Current Pricing Rules for the Unbundled Network Element Platform*, WC Docket No. 03-157, Order, 19 FCC Rcd 18731 (WCB/PPD 2004).

compensation or access charges.<sup>61</sup> In this case, Verizon seeks to apply the access charge regime to its provision of UNE end office switching.<sup>62</sup> The application of access pricing to unbundled switching rates is not supported by either the *Non-Cost Order* or the *Local Competition First Report and Order*.

## 2. New Issues

### a. Collocation Rates for Line Sharing and Line Splitting (Issue 9).

24. The parties disagree as to whether collocation rates should apply to line sharing and line splitting arrangements, with Verizon proposing to include rates in the pricing schedules and AT&T/WorldCom proposing to strike these rates from the pricing schedules.<sup>63</sup> This issue was not previously raised by the parties. The rates that Verizon proposes, which were neither ordered in the *Compliance Order* nor agreed to by the parties, fail to comply with our directions in the *Compliance Order*. Consequently, we order them stricken from the parties' pricing schedules.<sup>64</sup>

### b. LIDB Storage of Data (Issue 10) (Verizon-WorldCom issue only).

25. Verizon and WorldCom disagree as to whether the pricing schedule should include a NRC for LIDB (line information data base) Storage of Data.<sup>65</sup> Verizon claims that its interconnection agreement with WorldCom provides that WorldCom may store subscriber information in Verizon's LIDB.<sup>66</sup> Because Verizon incurs costs to do so, Verizon argues that it is "entitled to be compensated" and that the pre-existing NRC for this task is appropriate.<sup>67</sup> WorldCom argues that this rate should not be included in the pricing schedule because it was neither agreed to by the parties nor ordered by the Bureau.<sup>68</sup>

26. We agree with WorldCom and order this rate element stricken from the pricing schedule. The *Compliance Order* did not include a NRC for this element. Nor have the parties agreed on a rate.

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<sup>61</sup> See *Non-Cost Arbitration Order*, 17 FCC Rcd at 27306-07, paras. 546-49.

<sup>62</sup> See JDPL at 9-10 (Issue 14), column 2.

<sup>63</sup> JPDL at 6-7 (Issue 9).

<sup>64</sup> In rejecting Verizon's proposal for collocation rates for line sharing and line splitting, we note that collocation rates were not arbitrated by the parties. Our decision on this issue does not reflect any determination regarding collocation rates generally, apart from whether Verizon may include collocation rates for line sharing and line splitting.

<sup>65</sup> JDPL at 7 (Issue 10). This issue only arises between Verizon and WorldCom because Verizon has apparently agreed that such a rate is not necessary in its interconnection agreement with AT&T. See *id.*, column 3.

<sup>66</sup> JDPL at 7 (Issue 10), column 2.

<sup>67</sup> JDPL at 7 (Issue 10), column 2.

<sup>68</sup> JDPL at 7 (Issue 10), column 3.

Thus, pursuant to our clear instructions in the *Compliance Order*, we find that the Verizon-WorldCom pricing schedule should not contain a rate for this element.<sup>69</sup>

27. In addition, Verizon's reliance on the terms of its interconnection agreement with WorldCom seems misplaced. Although the provision referenced by Verizon does permit WorldCom to store information in Verizon's LIDB, it does not specify that WorldCom must make any additional payment to Verizon to do so.<sup>70</sup>

**c. OC-3 and OC-12 Dedicated Transport, OC-3 and OC-12 Entrance Facilities, DS-3 Subloop Feeder, and Dark Fiber (Issues 11, 12) (Verizon-WorldCom issues only).**

28. Verizon proposes rates, recurring and non-recurring, for OC-3 and OC-12 dedicated transport, OC-3 and OC-12 entrance facilities, DS-3 subloop feeder, and dark fiber.<sup>71</sup> Verizon claims that, although it is not required to provide these unbundled elements, the terms of its interconnection with WorldCom may be interpreted to require Verizon to provide these elements to WorldCom until the parties negotiate an amendment pursuant to the agreement's change of law provision.<sup>72</sup> Verizon also notes that the Bureau adopted rates for some of these elements.<sup>73</sup> Alternatively, Verizon proposes that the Bureau order the addition of language to its interconnection agreement with WorldCom stating that, notwithstanding any current provisions of the agreement, Verizon does not have an obligation to provide these elements unless it is required to do so by law.<sup>74</sup>

29. WorldCom claims that these rates were not ordered by the Bureau nor agreed to by the parties and, thus, should be deleted from the agreement.<sup>75</sup> WorldCom proposes instead a footnote stating that, notwithstanding the terms of the agreement (other than the change of law provision), Verizon is not required to provide these elements and, therefore, no rates for these elements are contained in the pricing schedule.<sup>76</sup>

30. We resolve these issues in accordance with the *Compliance Order*, which required the parties to submit pricing amendments containing the rates, and only those rates, that we adopted or that

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<sup>69</sup> If Verizon believed that a NRC for LIDB Storage of Data was necessary, it should have raised this issue in response to the AT&T/WorldCom Compliance Filing. It is procedurally improper for Verizon to raise this issue now.

<sup>70</sup> See Letter from Jodie L. Kelley, Jenner & Block, to Marlene H. Dortch, Sec'y, FCC, CC Docket No. 00-218 (filed Sept. 3, 2003), Verizon-WorldCom Interconnection Agreement § 11.5.2.3 ("Verizon shall enable MCIm to store in Verizon's LIDB any subscriber line number or special billing number record (in accordance with the technical reference in FR-1158-CORE OSSGR, Section 22.3), whether ported or not, regardless of the number's NPA-NXX or NXX-0/1XX, in accordance with standard industry practices.").

<sup>71</sup> JDPL at 7-8 (Issues 11, 12), column 2.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> JDPL at 7-8 (Issues 11, 12), column 3.

the parties otherwise agreed to include.<sup>77</sup> We reject both Verizon's alternative proposal and WorldCom's proposed footnote because they were neither set forth in the *Compliance Order* nor agreed to by the parties. We adopt Verizon's proposed rates for OC-3 and OC-12 dedicated transport and entrance facilities because these rates are the rates set forth for these elements in the *Compliance Order*.<sup>78</sup> For DS-3 subloop feeder, we similarly adopt Verizon's proposed recurring rate because it is the rate we adopted in the *Compliance Order*.<sup>79</sup> We reject, however, Verizon's proposed NRC rates for DS-3 subloop feeder. Verizon provided no basis for these rates and they were not set forth in the *Compliance Order*. We therefore decline to set NRC rates for this element. For dark fiber, we adopt the recurring rates proposed by Verizon because these are identical to those we required in the *Compliance Order*.<sup>80</sup> For dark fiber NRCs, as we explain *infra* in section II.A.3.b, we reject Verizon's proposed NRCs because they were neither ordered by us nor agreed to by the parties, and instead adopt the NRCs proposed by AT&T,<sup>81</sup> which are consistent with those set forth in the *Compliance Order*.<sup>82</sup>

### 3. Attempts to Re-litigate Issues

#### a. Hot Cut Rates (Issue 1).

31. Verizon claims that the NRC for hot cuts set forth in the *Compliance Order* does not apply to the hot cut processes described in the parties' interconnection agreements and that, therefore, additional Coordinated Migration charges based on its NRC model should apply to hot cuts.<sup>83</sup> AT&T/WorldCom claim that the Bureau adopted hot cut rates based on their NRC model and that these rates govern the hot

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<sup>77</sup> See *Compliance Order*, 19 FCC Rcd at 1274, para. 41.

<sup>78</sup> See *Compliance Order*, 19 FCC Rcd at 1279-80, App. A (Rates).

<sup>79</sup> See *id.* 1277, App. A (Rates).

<sup>80</sup> Compare Verizon-WorldCom Pricing Schedule at 28, with *Compliance Order*, 19 FCC Rcd at 1281, App. A.

<sup>81</sup> As stated *supra*, WorldCom did not propose dark fiber NRCs.

<sup>82</sup> See *infra* section II.A.3.b. The disputed Verizon-WorldCom pricing schedule, unlike the disputed Verizon-AT&T schedule, contains dark fiber non-recurring rate elements between a Verizon central office and a competitive LEC central office. Compare March Amendment Filing, Tab 4 at 28, with *id.*, Tab 3 at 23. Specifically, Verizon proposes NRCs for "Serving Wire Center ("SWC") Charge/SWC/Pair" and for "Channel Termination Charge/CLEC C.O." See March Amendment Filing, Tab 4 at 28. WorldCom proposes the Fiber Cross Connect rates adopted in the *Compliance Order* for the former and proposes deleting the rate for the latter. See *id.* We adopt the WorldCom proposal for "Serving Wire Center ("SWC") Charge/SWC/Pair" NRC because it is consistent with the NRCs we adopted in the *Compliance Order*. We decline to adopt a Channel Termination Charge/CLEC C.O. dark fiber NRC because we reject both the Verizon cost study and its resulting rates and the WorldCom proposed footnote, and because there is no AT&T NRC to use. Instead, because a rate for this NRC was not established in the *Compliance Order*, nor agreed to by the parties, we find that the rate for this element was not properly raised. We thus strike it from the Verizon-WorldCom pricing schedule.

<sup>83</sup> JDPL at 1 (Issue 1), column 2; March Amendment Filing, Tab 3 (Verizon-AT&T Pricing Schedule) at 15 (Verizon proposes 2 Wire Hot Cut rates of \$140.70/loop without premise visit and \$231.49/loop with premise visit and 4-Wire Hot Cut rates of \$121.45/loop with premise visit and \$251.27 without premise visit); March Amendment Filing, Tab 4 (Verizon-WorldCom Pricing Schedule) at 17 (same).

cuts performed pursuant to the parties' interconnection agreements.<sup>84</sup> They therefore propose that the pricing schedules exclude Verizon's proposed Coordinated Migration rates.<sup>85</sup>

32. We agree with AT&T/WorldCom and strike Verizon's proposed language and rates on Coordinated Migrations. In the *Cost Order*, "we adopt[ed] AT&T/WorldCom's hot cut proposal" and determined that the hot cut rates should be established using their NRC model.<sup>86</sup> In so doing, we rejected the use of the Verizon NRC model because (among other reasons) it is based on excessive manual task activities.<sup>87</sup> We decline to revisit this decision here and, instead, reiterate our finding that the hot cut NRCs shall be the rates calculated using the AT&T/WorldCom NRC model.<sup>88</sup> Accordingly, we order Verizon's proposed Coordinated Migration rates and accompanying language stricken from the pricing schedules.

**b. Dark Fiber NRCs – Verizon-AT&T Issues (Issues 2 and 3).**

33. Verizon proposes including its pre-existing non-recurring rates for dark fiber records review and for certain dark fiber provisioning activities.<sup>89</sup> Verizon alleges that these costs are not included in the recurring rates and that the AT&T/WorldCom NRC model similarly does not include costs for these activities.<sup>90</sup> Verizon further claims that it is inappropriate to use the non-recurring rates for fiber cross-connects as dark fiber NRCs because the AT&T/WorldCom NRC model does not include costs for fieldwork tasks in these rates.<sup>91</sup>

34. AT&T contends that the technical assumptions binder (NTAB) that accompanied the AT&T/WorldCom NRC model assumes that access to fiber records would be provided by Verizon via Operations Support Systems (OSS) and that the costs for such access are recovered through the engineering, furnishing, and installation (EF&I) factors that are included in the recurring cost calculations.<sup>92</sup> AT&T also claims that fiber cross-connects establish a fiber pathway between collocation

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<sup>84</sup> JDPL at 1 (Issue 1), column 3 (citing *Cost Order*, 18 FCC Rcd at 17957-58, paras. 602-04).

<sup>85</sup> *Id.*

<sup>86</sup> *Cost Order*, 18 FCC Rcd at 17958, para. 604.

<sup>87</sup> *Id.*

<sup>88</sup> Verizon has filed an Application for Review of the Bureau's determination to adopt the AT&T/WorldCom NRC model. *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-251, Verizon Virginia Inc.'s Application for Review at 70-72 (filed Sept. 29, 2003).

<sup>89</sup> JDPL at 1-2 (Issue 2), column 2.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> JDPL at 1-2 (Issue 2), column 3.

space and the competitive carrier's point of interconnection, and thereby account for the labor costs of placing the cross-connection.<sup>93</sup>

35. We adopt the AT&T proposal. Verizon is attempting to re-litigate the issue of whether to use the AT&T/WorldCom NRC model and is challenging, for the first time, the specific fiber cross-connect rates generated by the AT&T/WorldCom NRC model and adopted in the *Compliance Order*. We explained at length in the *Cost Order* that the AT&T/WorldCom NRC model is superior to the Verizon NRC model and we do not re-visit that determination here.<sup>94</sup> Verizon's claim that the AT&T/WorldCom NRC model does not include certain dark fiber NRCs, such as the NRC for records review, is an attempt to re-litigate the relative merits of the parties' NRC models.<sup>95</sup> Verizon, moreover, is mistaken in its assessment of the AT&T/WorldCom NRC model. For example, the model specifically calls for records review costs to be recovered in recurring rates through EF&I factors.<sup>96</sup> Finally, it is procedurally inappropriate for Verizon to challenge now, for the first time, the fiber cross connect rates generated by the AT&T/WorldCom NRC model and included in their compliance filing. These rates were adopted by the Bureau in the *Compliance Order* and, accordingly, "[w]e direct[ed] the parties to apply the rates . . . in their respective interconnection agreements."<sup>97</sup> We therefore reject Verizon's proposed dark fiber NRCs in favor of AT&T's proposal.<sup>98</sup>

36. Verizon also proposes rates for dark fiber time and materials.<sup>99</sup> Verizon claims that the terms of its interconnection agreement with AT&T state that AT&T will pay Verizon for "optional engineering services" that AT&T requests "to improve the transmission characteristics and/or to repair the dark fiber."<sup>100</sup> AT&T claims that these costs are recurring costs and are accounted for through EF&I factors.<sup>101</sup>

37. We agree with AT&T and order the dark fiber time and materials charges stricken from the Verizon-AT&T pricing schedule. First, these charges appear to recover the type of maintenance and repair costs that we stated should be recovered in recurring rates through annual charge factors (ACFs),

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<sup>93</sup> *Id.*

<sup>94</sup> See *Cost Order*, 18 FCC Rcd at 19741-49, paras. 557-80.

<sup>95</sup> See *id.*; see also *Compliance Order*, 19 FCC Rcd at 1261, para 3 n.12 and accompanying text.

<sup>96</sup> See AT&T/WorldCom Ex. 23 (Non-Recurring Cost Study), Vol. 2 (NTAB) at 148 ("It is further assumed that data-basing of the system as well as the creation of the templates and inventory for the OTDR (FC-5000) system, and NMA surveillance OSS system are built at the time of construction (EF&I)."); see also *Cost Order*, 18 FCC Rcd at 17954, para. 592 ("Database maintenance is a recurring cost that should be recovered in recurring charges through ACFs, and not through a NRC.").

<sup>97</sup> *Compliance Order*, 19 FCC Rcd at 1274, para. 41.

<sup>98</sup> We note that, while we adopt the AT&T proposed dark fiber NRC rates, we also adopt the Verizon proposed dark fiber recurring rates because these rates are identical to those we required in the *Compliance Order*. See *infra* section II.A.2.c; *Compliance Order*, 19 FCC Rcd at 1281, App. A.

<sup>99</sup> JDPL at 2 (Issue 3), column 2.

<sup>100</sup> *Id.*

<sup>101</sup> JDPL at 2 (Issue 3), column 3.

and not in NRCs.<sup>102</sup> Verizon fails to explain why these time and materials charges should not be recovered through recurring rates. Verizon's proposal, moreover, fails to comply with our clear instructions in the *Compliance Order*.<sup>103</sup> We did not order dark fiber time and materials charges; nor did Verizon and AT&T mutually agree to these charges. They are, thus, inappropriate for inclusion in the Verizon-AT&T pricing schedule and we require them to be deleted.

**c. NRCs for Repair-Related Misdirects and for "Customer Not Ready" (Issue 6).**

38. Verizon proposes to include NRCs to recover labor and premise visit costs for repair-related misdirects and for "customer not ready" situations.<sup>104</sup> Verizon asserts that, if AT&T/WorldCom request that Verizon perform repair work, but (1) AT&T/WorldCom misdirect Verizon to the wrong location, (2) the trouble is not on Verizon's network, or (3) the customer is not ready when the Verizon repair technician arrives, then AT&T/WorldCom should pay for the costs incurred by Verizon.<sup>105</sup> Verizon further asserts that WorldCom is required to pay such charges pursuant to the Verizon-WorldCom interconnection agreement.<sup>106</sup> Finally, Verizon contends that requiring NRCs for these scenarios would create incentives for competitive carriers to provide Verizon with accurate repair information.<sup>107</sup>

39. AT&T/WorldCom do not dispute that Verizon should be compensated in these situations; rather, they contend that the Bureau found that the costs Verizon incurs for repair work are maintenance costs that are recovered through recurring rates.<sup>108</sup> As such, they allege, the establishment of additional NRCs would result in double recovery.<sup>109</sup>

40. We order these NRCs stricken from the pricing schedules. Verizon failed to raise this issue during the compliance phase of the proceeding. Verizon's proposal, therefore, fails to comply with our requirement that the parties include only those rates ordered by the Bureau or mutually agreed upon by the parties.<sup>110</sup>

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<sup>102</sup> See *Cost Order*, 18 FCC Rcd at 17952, para. 587 (maintenance expenses should be recovered through ACFs).

<sup>103</sup> See *Compliance Order*, 19 FCC Rcd at 1274, para. 41.

<sup>104</sup> JDPL at 4-5 (Issue 6), column 2.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> JDPL at 4 (Issue 6), column 3.

<sup>109</sup> *Id.*

<sup>110</sup> See *Compliance Order*, 19 FCC Rcd at 1274, para. 41. AT&T/WorldCom, moreover, appear correct that we previously determined that repair costs are recovered in the recurring rates through the use of ACFs. See *Cost Order*, 18 FCC Rcd at 17951-52, paras. 585-588. Permitting Verizon to charge NRCs to recover repair costs would result in over-recovery, and Verizon fails to offer a solution to this over-recovery problem.

**d. Line and Station Transfer for xDSL loops (Issue 8).**

41. Verizon proposes including in the pricing schedules rates for line and station transfers pertaining to loops used in the provision of xDSL loops and other high capacity services.<sup>111</sup> Verizon claims that its interconnection agreement with WorldCom “makes specific reference to line and station transfers,” and that “Verizon cannot be required to perform this work for free.”<sup>112</sup> Verizon therefore proposes the current rates for line and station transfers.<sup>113</sup>

42. AT&T/WorldCom claim that line and station transfers are basic maintenance tasks and, as such, that these costs are included in maintenance costs recovered through recurring rates.<sup>114</sup> Any additional NRC for line and station transfers, they contend, would result in double recovery.<sup>115</sup>

43. We order the rates for line and station transfers stricken from the pricing schedules. Verizon failed to raise this issue during the compliance phase of the proceeding. Verizon’s proposal, therefore, fails to comply with our requirement that the parties include only those rates ordered by the Bureau or mutually agreed upon by the parties.<sup>116</sup>

**B. Negotiated Verizon-WorldCom Intercarrier Compensation for Local and ISP Traffic Amendment**

**1. Background**

44. On March 26, 2004, WorldCom filed in this arbitration proceeding a negotiated amendment to its interconnection agreement with Verizon.<sup>117</sup> WorldCom acknowledges that interconnection agreement amendments would normally be filed with the appropriate state commission. It claims, however, that, because the Commission pre-empted the Virginia Commission to arbitrate the terms and conditions of the current Verizon-WorldCom interconnection agreement, “it makes the most sense to have this amendment approved by the [Commission] as part of its broader duties in arbitrating disputes over the contract’s formation.”<sup>118</sup> In particular, WorldCom contends that the Commission has previously determined that once an arbitration proceeding commences before the Commission, all further action

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<sup>111</sup> JDPL at 6 (Issue 8), column 2.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> JDPL at 6 (Issue 8), column 3.

<sup>115</sup> *Id.*

<sup>116</sup> See *Compliance Order*, 19 FCC Rcd at 1274, para. 41. We also note that line and station transfers are basic rearrangement activities. As such, the costs of these activities are recovered in the recurring UNE rates through ACFs. Verizon, thus, is not providing a service for free, but rather is compensated for its costs through recurring rates. Were Verizon also to assess a NRC for performing these activities, it would over-recover its costs.

<sup>117</sup> See WorldCom Negotiated Amendment Filing.

<sup>118</sup> *Id.* at 1.



pertaining to the arbitration or the underlying interconnection agreement remains solely within the Commission's purview.<sup>119</sup>

45. Verizon filed a motion to strike the WorldCom Negotiated Amendment Filing.<sup>120</sup> Although it acknowledges that it reached a negotiated amendment with WorldCom, Verizon contends that the amendment should be filed with and approved by the Virginia Commission.<sup>121</sup> Verizon states that, on March 22, 2004, it submitted the same amendment to the Virginia Commission for approval.<sup>122</sup> Verizon argues that, unless and until the Virginia Commission affirmatively decides not to act on its submission, the Commission may not act to again preempt the Virginia Commission.<sup>123</sup> Verizon also implies that the Virginia Commission is likely to act to approve (or reject) the negotiated amendment, noting that the Virginia Commission has approved amendments to other interconnection agreements.<sup>124</sup> Finally, Verizon alleges that the original preemption order in this proceeding limited the scope of the proceeding to the issues arbitrated by the parties only, and that the negotiated amendment is not within the scope of those issues.<sup>125</sup>

## 2. Discussion

46. We grant the Verizon Motion to Strike. The Commission narrowly construes a state commission's failure to act, the necessary precursor to Commission's preempting the state commission and resolving arbitration disputes.<sup>126</sup> Consistent with this policy, the Commission's original preemption order in this proceeding expressly limited its scope "to resolv[ing] WorldCom's request for arbitration of

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<sup>119</sup> *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration*, CC Docket No. 00-218, MCI's Opposition to Motion to Strike MCI's Submission for Approval of Amendment to Verizon-MCI Interconnection Agreement at 3-4 (filed April 19, 2004) (WorldCom Opposition) (citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16129, para. 1289 (1996)).

<sup>120</sup> Verizon Motion to Strike at 1-7.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 2.

<sup>123</sup> *Id.* at 3-4. Verizon further claims that, if the Virginia Commission remains silent at the end of the 90 day review period, the amendment would be deemed approved as a matter of law and that such silence on the part of the Virginia Commission would not constitute a failure to act. *Id.* (citing 47 U.S.C. § 252(e)(4); 47 C.F.R. § 51.501(c)).

<sup>124</sup> *Id.* at 4-5 (internal citations omitted).

<sup>125</sup> *Id.* at 6.

<sup>126</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 16128, para. 1285 ("The Commission will not take an expansive view of what constitutes a state's 'failure to act.' Instead, the Commission interprets 'failure to act' to mean a state's failure to complete its duties in a timely manner. This would limit Commission action to instances where a state commission fails to respond, within a reasonable time, to a request for mediation or arbitration, or fails to complete arbitration within the time limits of section 252(b)(4)(C). The Commission will place the burden of proof on parties alleging that the state commission has failed to respond to a request for mediation or arbitration within a reasonable time frame.").

an interconnection agreement.”<sup>127</sup> WorldCom was permitted to “petition this Commission to arbitrate any *open issues* concerning an interconnection agreement with Verizon in Virginia.”<sup>128</sup>

47. The WorldCom Negotiated Amendment Filing represents a matter separate and distinct from the open issues that WorldCom identified for arbitration in its preemption petition. First, the filing does not contain any open issues. Rather, it represents agreed upon provisions that will amend the parties’ interconnection agreements in Virginia and in every other jurisdiction in which the parties or their respective affiliates have entered into an interconnection agreement.<sup>129</sup> As such, the amendment appears to relate to negotiations separate from those that resulted in the arbitration proceeding before us. WorldCom, moreover, does not attempt to tie the amendment to any of the issues that it identified in its original petition.

48. Our grant of the Verizon Motion to Strike, contrary to WorldCom’s view, is fully consistent with the Commission’s determination that, once it preempts a state commission arbitration proceeding, it “retains jurisdiction over any matter and proceeding for which it assumes responsibility under Section 252(e)(5).”<sup>130</sup> As we noted, in preempting the Virginia Commission, the Commission assumed (and delegated to the Bureau) the responsibility to arbitrate the open issues raised by the parties. The scope of the proceeding is, thus, restricted to resolution of these open issues, culminating in the approval of an interconnection agreement that contains all arbitrated and negotiated rates, terms, and conditions.<sup>131</sup> Because the open issues did not include the WorldCom Negotiated Agreement Filing, we find that this filing does not fall within the ambit of the matters over which the Commission retains jurisdiction.

49. Moreover, inasmuch as Verizon filed the negotiated amendment with the Virginia Commission, and the Virginia Commission issued an order on June 18, 2004, approving the amendment, we find that the Virginia Commission did not “fail to act” under section 252(e)(5) of the 1996 Act.<sup>132</sup> Thus, we need not approve or reject the negotiated amendment. Accordingly, we grant the Verizon Motion to Strike.

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<sup>127</sup> *Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-218, Memorandum Opinion and Order, 16 FCC Rcd 6224, 6225-26, para. 4 (2001) (*WorldCom Preemption Order*); see also *Procedures Established for Arbitration of Interconnection Agreements Between Verizon and AT&T, Cox, and WorldCom*, CC Docket Nos. 00-218, 00-249, 00-251, Public Notice, 16 FCC Rcd 3957 (CCB 2001) (“[T]he Commission . . . preempted . . . the jurisdiction of the Virginia State Corporation Commission . . . with respect to the arbitration of an interconnection agreement between Verizon-Virginia, Inc. . . . and WorldCom, Inc.”).

<sup>128</sup> *WorldCom Preemption Order*, 16 FCC Rcd at 6229-30, para. 11 (emphasis added).

<sup>129</sup> See *WorldCom Negotiated Amendment Filing*, Amendment at Ex. A.

<sup>130</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 16129, para. 1289.

<sup>131</sup> See *id.* at 16129-30, paras. 1290-91.

<sup>132</sup> See 47 U.S.C. § 252(e)(5); Letter from Lynn R. Charytan, Wilmer Cutler Pickering Hale and Dorr LLP to Marlene H. Dortch, Sec’y, FCC, CC Docket No. 00-218 (filed June 25, 2004) (attaching *Application of Verizon Virginia Inc. and MCI Metro Access Transmission Services of Virginia, Inc. for Approval of an Interconnection Agreement under § 252(e) of the Telecommunications Act of 1996*, Virginia Commission Case No. PUC-2004-00040, Order Approving Amendment (June 18, 2004).

### III. CONCLUSION

50. In this Order, the Bureau resolves the final pricing issues in the above-captioned consolidated arbitration proceedings. We have implemented the above decisions and incorporated them into the pricing schedules submitted by the parties. Accordingly, we require Verizon and AT&T to jointly execute and submit to the Commission within five (5) business days of the release date of this Order an amendment to their interconnection agreement containing the pricing schedule set forth in Appendix A hereto in its entirety and without any changes whatsoever. We require Verizon and WorldCom to jointly execute and submit to the Commission within five (5) business days of the release date of this Order an amendment to their interconnection agreement containing the pricing schedule set forth in Appendix B hereto in its entirety and without any changes whatsoever. Finally, in this Order, the Bureau determines that the Verizon-WorldCom interconnection agreement amendment negotiated subsequent to the arbitration does not fall within the confines of this proceeding and therefore grants the Verizon Motion to Strike.

### IV. ORDERING CLAUSES

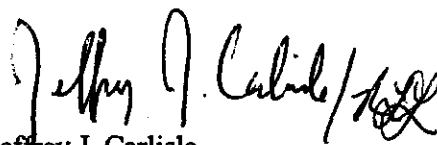
51. Accordingly, IT IS ORDERED that, pursuant to section 252 of the Communications Act of 1934, as amended, and the authority delegated pursuant to sections 0.91, 0.291, and 51.807 of the Commission's rules, 47 U.S.C. § 252 and 47 C.F.R. §§ 0.91, 0.291, 51.807, the issues presented for arbitration ARE DETERMINED as set forth in this Memorandum Opinion and Order.

52. IT IS FURTHER ORDERED that, pursuant to section 252(e)(1) of the Communications Act of 1934, 47 U.S.C. § 252(e)(1), and the authority delegated pursuant to sections 0.91, 0.291, and 51.807 of the Commission's rules, 47 U.S.C. § 252 and 47 C.F.R. §§ 0.91, 0.291, 51.807, AT&T Communications of Virginia, Inc. and Verizon Virginia, Inc. SHALL INCORPORATE the Pricing Schedule contained in Appendix A hereto in its entirety into an amendment to their interconnection agreement, to be filed within five (5) business days from the date of this Order with the Commission.

53. IT IS FURTHER ORDERED that, pursuant to section 252(e)(1) of the Communications Act of 1934, 47 U.S.C. § 252(e)(1), and the authority delegated pursuant to sections 0.91, 0.291, and 51.807 of the Commission's rules, 47 U.S.C. § 252 and 47 C.F.R. §§ 0.91, 0.291, 51.807, WorldCom, Inc. and Verizon Virginia, Inc. SHALL INCORPORATE the Pricing Schedule contained in Appendix B hereto in its entirety into an amendment to their interconnection agreement, to be filed within five (5) business days from the date of this Order with the Commission.

54. IT IS FURTHER ORDERED that the Verizon Motion to Strike IS GRANTED as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

  
Jeffrey J. Carlisle  
Chief  
Wireline Competition Bureau

APPENDIX A

Verizon-AT&T Pricing Schedule<sup>1</sup>

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<sup>1</sup> All footnotes in this Appendix A (except for this one) are the footnotes contained in the Verizon-AT&T pricing schedule, as filed by the parties. See Revised Amendment Filing, Tabs 1, 2.

**EXHIBIT A<sup>1</sup>**  
**VERIZON VIRGINIA INC. and AT&T**

**DETAILED SCHEDULE OF ITEMIZED CHARGES**

**1. VERIZON SERVICES, FACILITIES, AND ARRANGEMENTS:**

**A. INTERCONNECTION**

**Service or Element Description:**

**Recurring Charges:**

**Non-Recurring  
Charges:**

**I. Local Traffic Termination**

Traffic Delivered at Verizon End Office

\$0.000000 per MOU

Not Applicable

Traffic Delivered at Verizon Tandem

\$0.000290 per MOU

Not Applicable

**II. Entrance Facilities and Transport for  
Interconnection**

Entrance facilities, and transport, as appropriate,  
for Interconnection at Verizon End Office,  
Tandem Office, or other Point of  
Interconnection

Per rates in Part B  
(Unbundled Network  
Elements), Sections I(A)  
(Unbundled Dedicated  
Transport - IOF) and  
III(A) (Unbundled  
Dedicated Transport -  
Entrance Facilities).

Per rates in Part B  
(Unbundled Network  
Elements), Sections I(A)  
(Unbundled Dedicated  
Transport - IOF) and  
III(A) (Unbundled  
Dedicated Transport -  
Entrance Facilities).

<sup>1</sup> In the event this Exhibit A refers to a service that is not available under the Agreement, the Agreement shall control. Nothing in this Exhibit A shall be deemed to require Verizon to provide a service that the Agreement does not require Verizon to provide. The Parties acknowledge that the rates and charges set forth in this Exhibit A are subject to change pending decision(s) with respect to *In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218 and 00-251 ("Pricing Arbitration"). Further, nothing in this Exhibit A shall be construed or used to waive, limit or interpret any arguments, positions, or statements by either Party in any regulatory, judicial, or legislative proceeding, including the Pricing Arbitration.

**Service or Element Description:****Recurring Charges:****Non-Recurring  
Charges:**

**Exchange Access Service**  
**Interstate**

Per Verizon FCC Tariff number 1 as amended from time to time.

**Intrastate**

Per Verizon VA S.C.C.-VA. – No. 217 as amended from time to time.

**III. Mid Span Fiber Meet Arrangements**

To be charged in accordance with the requirements of Section 4 of this Agreement.

**IV. Tandem Transit arrangements for Tandem Transit Traffic between AT&T and carriers other than Verizon that subtend a Verizon Tandem Switch. (Not applicable to Toll Traffic or when Meet Point Billing Arrangement applies; Separate trunks required for IXC subtending trunks)**

**Tandem Switching**

Per Verizon Tariff F.C.C. No. 1, Section 6 and  
Verizon Virginia, Inc Tariff  
S.C.C. VA No. 217 Section  
6

**Not Applicable**

**Tandem-Switched Transport**

Per Verizon Tariff F.C.C. No. 1, Section 6 and  
Verizon Virginia, Inc Tariff  
S.C.C. VA No. 217 Section  
6

**Not Applicable**

**Transit Service Billing Fee**

The Transit Service Billing Fee will equal five (5) percent of the monthly service charges incurred by AT&T with respect to each third party CLEC for which the Tandem Transit Traffic achieves the Threshold Level.

**Transit Service Trunking Charge (for each relevant third party carrier)**

The Transit Service Trunking Charge shall equal, with respect to each third party CLEC for which the Tandem Transit Traffic achieves the Threshold Level, the product of: (i) the monthly rate for the Dedicated Tandem Trunk Port, per interstate (Verizon FCC No. 1, Section 6.9.1) access tariff, multiplied by (ii) 24. The Transit Service Trunking Charge shall apply per DS1 level volume of calls, and per any fractional amount thereof rounded to the next highest DS1.

**B. UNBUNDLED NETWORK ELEMENTS****Service or Element Description:****Recurring Charges:****Non-Recurring Charges:****I. Unbundled Dedicated Transport****A. Interoffice Transport (IOF)****Option 1 (Multiplexing & DCS).**

DS-1

\$41.85/Month  
(includes both ends)  
\$3.02/Mile**DS1:**

\$18.63 Install, per line.

\$4.88 Disconnect, per line.

DS-3

\$314.10/Month  
(includes both ends)  
\$42.71/Mile**DS3:**

\$18.63 Install, per line

\$4.88 Disconnect, per line

STS-1

\$317.80/Month  
(includes both ends)  
\$42.93/Mile**STS-1:**Option 1 DS3 IOF Install  
NRC shall apply, per lineOption 1 DS3 IOF  
Disconnect NRC shall  
apply, per line

**Service or Element Description:****Option 2 (DCS only).**

DS-1

DS-3

STS-1

**Recurring Charges:**

\$27.39/Month  
(includes both ends)  
\$3.02/mile

\$314.10/Month  
(includes both ends)  
\$42.71/mile

\$317.80/Month  
(includes both ends)  
\$42.93/Mile

**Non-Recurring Charges:****DS1:**

\$18.63 Install, per line.

\$4.88 Disconnect, per line.

**DS3:**

\$18.63 Install, per line

\$4.88 Disconnect, per line

**STS-1:**

Option 2 DS3 IOF Install  
NRC shall apply, per line

Option 2 DS3 IOF  
Disconnect NRC shall  
apply, per line